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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VICTOR PEREZ, as Special Administrator
of the Estate of CARLOS PEREZ,
deceased; VICTOR PEREZ, as the Guardian
Ad Litem for S.E.P., a minor; VICTOR PEREZ,
as the Guardian Ad Litem for A.I.P, a minor;.

Case No. 2:15-cv-1572-ADG-CWH

**PLAINTIFF'S AMENDED
COMPLAINT**

(Jury Trial Demanded)

Plaintiff,

-vs-

STATE OF NEVADA, ex.rel. NEVADA;
DEPARTMENT OF CORRECTIONS;
DIRECTOR GREG COX, individually; WARDEN
DWIGHT NEVEN, individually; ASSISTANT
WARDEN TIMOTHY FILSON, individually;
COT. RAMOS, individually; LIEUTENANT
OLIVER, individually; CORRECTIONS
OFFICER CASTRO, individually;
CORRECTIONS OFFICER
SMITH, individually; and DOES I-X,
inclusive; and ROES I-X, inclusive,

Defendants.

/

COMES NOW, Plaintiffs, VICTOR PEREZ, as Special Administrator of the Estate of
CARLOS PEREZ, deceased; VICTOR PEREZ, as the Guardian Ad Litem for S. E. P., a minor;
VICTOR PEREZ, as the Guardian Ad Litem for A. I. P., a minor; individually, by and through
their counsel, Cal J. Potter, III, Esq. and C. J. Potter, IV, Esq. of Potter Law Offices for his
Complaint against Defendants, allege as follows:

...

...

JURISDICTION AND VENUE

1
2 1. This is a civil rights action arising from Defendants Castro's, Smith's and Ramos'
3 excessive use of force and wrongful shooting of Decedent Carlos Perez at High Desert State
4 Prison, Clark County, Nevada; Defendants denial of medical care to Carlos Perez and the
5 supervisory Defendants' creation of the practices which caused Carlos Perez's Death. This action
6 is brought pursuant to 42 USC § 1983 and the Eight Amendment to the United States
7 Constitution, as well as the Fourteenth Amendment right to association by the family member
8 and heirs of Carlos Perez ("Decedent").

9 2. A substantial part of the events and/or omissions complained of herein occurred in
10 Indian Springs, Nevada, and this action is properly assigned to Nevada's Eighth Judicial District
11 Court.

PARTIES

12
13 3. At all relevant times to these proceedings, Plaintiff Victor Perez, as Special
14 Administrator of the Estate of Carlos Perez, deceased, and as the Guardian Ad Litem for S.E.P. a
15 minor, and A.I. P. a minor was and is a resident of the State of Nevada and is the brother of the
16 Decedent.

17 4. At all relevant times to these proceedings, Defendant State of Nevada ex. rel.
18 Nevada Department of Corrections promulgated the unconstitutional practices and maintained
19 the pattern of behavior caused Carlos Perez's death, and operates High Desert State Prison and
20 employs the individual defendants.

21 5. Defendant Director Greg Cox was and is the Director of Nevada Department of
22 Corrections at all times herein and promulgated the unconstitutional policies which caused
23 Carlos Perez's death. Defendant Cox has ratified the individual defendants unconstitutional
24 conduct and his ratification demonstrates that the individual defendants actions were not
25 inconsistent with NDOC's actual customs, even when they depart from generally accepted
26 policies. He is sued in his individual capacity. Defendant Cox was terminated in part for his part
27 for his untimely review of this shooting. The subsequent termination leads credence to
28 Defendant Cox's systematic approach to hold subordinates accountable for their actions. Each

1 Supervisory Defendant is liable for their role in the practices and policies that caused the death
2 of Carlos Perez as a result of their inaction in the training, supervision, or control of their
3 subordinates and conduct that showed a reckless or callous indifference to the rights of others.
4 Specifically, the fact that the ASCA determined that “[k]ey elements of the Department’s Use of
5 Force Policy are not consistent with nationally accepted correctional standards and currently
6 accepted best practices” which demonstrates that the supervisory level defendants are liable for
7 their role in creating the policy and the HDSP operational procedure.

8 6. Defendant Dwight Neven was and is the Warden of the High Desert State Prison
9 and at all times relevant herein and promulgated the unconstitutional policies which caused
10 Carlos Perez’s death. Defendant Filson has ratified the individual defendants unconstitutional
11 conduct and his ratification demonstrates that the individual defendants actions were not
12 inconsistent with NDOC's actual customs, even when they depart from generally accepted
13 policies. He is sued in his individual capacity. Each Supervisory Defendant is liable for their
14 role in the practices and policies that caused the death of Carlos Perez as a result of their inaction
15 in the training, supervision, or control of their subordinates and conduct that showed a reckless or
16 callous indifference to the rights of others. Specifically, the fact that the ASCA determined that
17 “[k]ey elements of the Department’s Use of Force Policy are not consistent with nationally
18 accepted correctional standards and currently accepted best practices” which demonstrates that
19 the supervisory level defendants are liable for their role in creating the policy and the HDSP
20 operational procedure.

21 7. Defendant Assistant Warden Timothy Filson was and is the Assistant Warden of
22 the High Desert State Prison at all times herein and promulgated the unconstitutional policies
23 which caused Carlos Perez’s death. Defendant Filson has ratified the individual defendants
24 unconstitutional conduct and his ratification demonstrates that the individual defendants actions
25 were not inconsistent with NDOC's actual customs, even when they depart from generally
26 accepted policies. He is sued in his individual capacity. Each Supervisory Defendant is liable
27 for their role in the practices and policies that caused the death of Carlos Perez as a result of their
28 inaction in the training, supervision, or control of their subordinates and conduct that showed a

1 reckless or callous indifference to the rights of others. Specifically, the fact that the ASCA
2 determined that “[k]ey elements of the Department’s Use of Force Policy are not consistent with
3 nationally accepted correctional standards and currently accepted best practices” which
4 demonstrates that the supervisory level defendants are liable for their role in creating the policy
5 and the HDSP operational procedure.

6 8. Defendant COT. Ramos was a Corrections Officer at High Desert State Prison
7 and was acting within the course and scope of that employment. He fired four times with live
8 rounds at Carlos Perez with intent to harm Mr. Perez and in fact killed Carlos Perez. He is sued in
9 his individual capacity. Ramos’ use of force was excessive and not a good faith effort to maintain
10 order as demonstrated by the facts that Ramos did not use the lesser means of force available to
11 him, which included physically separating the unarmed, handcuffed inmates. Furthermore, the
12 fact that Ramos reloaded his shotgun and shot Carlos as he lay bleeding demonstrates that
13 Ramos’ use of force was excessive and that he was deliberately indifferent to Carlos’ serious
14 medical needs.

15 9. Defendant Lieutenant Oliver was a Corrections Officer at High Desert State
16 Prison and was acting within the course and scope of that employment. Defendant Oliver was
17 deliberately indifferent to Carlos Perez constitutional rights as well as his serious medical needs.
18 He is sued in his individual capacity. Defendant Oliver has ratified the individual defendants
19 unconstitutional conduct and his ratification demonstrates that the individual defendants actions
20 were not inconsistent with NDOC's actual customs, even when they depart from generally
21 accepted policies. He is sued in his individual capacity. As a Lieutenant, Defendant Oliver is
22 responsible for supervising Defendants Castro and Smith, who were using Defendant State of
23 Nevada’s widespread practice of allowing two protective custody inmates out at the same time,
24 and supervising Defendant Trainee Ramos who was shooting inmates, in conformance with The
25 State of Nevada’s actual practice. Each Supervisory Defendant is liable for their role in the
26 practices and policies that caused the death of Carlos Perez as a result of their inaction in the
27 training, supervision, or control of their subordinates and conduct that showed a reckless or
28 callous indifference to the rights of others. Specifically, the fact that the ASCA determined that

1 “[k]ey elements of the Department’s Use of Force Policy are not consistent with nationally
2 accepted correctional standards and currently accepted best practices” which demonstrates that
3 the supervisory level defendants are liable for their role in creating the policy and the HDSP
4 operational procedure.

5 10. Defendant Corrections Officer Castro was a Corrections Officer at High Desert
6 State Prison and was acting within the course and scope of that employment. Defendant Castro
7 was deliberately indifferent to Carlos Perez constitutional rights as well as his serious medical
8 needs. Defendant Castro chose not to intervene and prevent two handcuffed individuals from
9 kicking one another. On the Contrary, Defendant Castro ordered that Carlos Perez be shot.
10 Thereafter he refused to provide medical attention to Carlos Perez. He is sued in his individual
11 capacity.

12 11. Defendant Corrections Officer Smith was a Corrections Officer at High Desert
13 State Prison and was acting within the course and scope of that employment. Defendant Smith
14 was deliberately indifferent to Carlos Perez constitutional rights as well as his serious medical
15 needs. chose not to intervene and prevent two handcuffed individuals from kicking one another.
16 On the Contrary, Smith walked around the inmates. Thereafter he refused to provide medical
17 attention to Carlos Perez. He is sued in his individual capacity.

18 12. The true names and capacities, whether individual, corporate, associate, or
19 otherwise, of Defendants herein designated as Does I-X are presently unknown to Plaintiffs
20 because the NDOC has chosen to cover-up their violations of civil rights rather than be
21 transparent and accountable for their actions, therefore, sue Defendants by such fictitious names;
22 when their true names and capacities are ascertained, Plaintiffs will amend the Complaint
23 accordingly to insert the same herein. In fact, the family of Carlos Perez has repeatedly attempted
24 to obtain information concerning NDOC’s murder of their brother, however NDOC has refused
25 to be transparent or accountable. Plaintiffs are informed and believe, and thereon allege, that each
26 of the Defendants sued herein was negligently, wrongfully, and otherwise responsible in some
27 manner for the events and happenings as hereinafter described, and proximately caused injuries
28 and damages to Plaintiffs. Among the Doe defendants are back-up officers and medical personnel

1 whom refused to respond to the scene in a expedient fashion and once upon the scene refused to
2 provide Carlos Perez with medical care with intentional, deliberate indifference to his serious
3 medical needs.

4 13. Plaintiffs are informed and believe, and thereon allege, that each of the
5 Defendants was at all material times an agent, servant, employee, partner, joint venturer, co-
6 conspirator, and/or alter ego of the remaining Defendants, and in doing the things herein alleged,
7 was acting within the course and scope of that relationship. Plaintiffs are further informed and
8 believe, and thereon allege, that each of the Defendants herein gave consent, aid, and assistance
9 to each of the remaining Defendants, and ratified and/or authorized the acts or omissions of each
10 Defendant as alleged herein, except as may be hereinafter otherwise specifically alleged. At all
11 material times, each Defendant was jointly engaged in tortious activity, resulting in the
12 deprivation of Plaintiffs and Decedent of constitutional rights and other harm.

13 14. The acts and omissions of all Defendants as set forth herein were at all material
14 times pursuant to the actual customs, policies, practices and procedures of the State of Nevada.

15 15. At all material times, each Defendant acted under color of the laws, statutes,
16 ordinances, and regulations of the State of Nevada.

17 16. This is a civil rights action, brought under § 1983 and state tort actions for the
18 wrongful death of inmate Carlos Perez (“Carlos”). Carlos was shot by a Defendant Ramos,
19 multiple times, by a 12 gauge shotgun while Carlos was handcuffed behind his back, unarmed,
20 and wearing nothing but underwear. Carlos was not a threat to anyone at the time he was shot.

21 17. This lawsuit arises from the homicidal death of Carlos Perez (“Carlos”) while he
22 was in protective custody at High Desert State Prison. The Clark County Coroner determined that
23 Carlos Perez died from multiple gunshot wounds to the head, neck, chest, and arms.

24 18. The Coroner determined that the manner of death was “homicide”.

25 19. Carlos was in protective custody because he had dropped out of a gang in order to
26 prepare for a successful reentry into society. At the time he was killed, Carlos only had
27 approximately three months left on his sentence.

28 20. Carlos Perez was shot and killed by a trainee officer Defendant Ramos, Carlos

1 Perez was handcuffed, unarmed, and not posing a threat or danger.

2 21. The Nevada Attorney General, who is defending this suit, is also criminally
3 prosecuting Defendant Ramos for manslaughter as a result of the wrongful death of Carlos Perez.

4 22. The shooting of Carlos Perez occurred on November 12, 2014, when Defendant
5 Ramos was assigned as a floor officer for Unit 2 AB at High Desert State Prison. At the same
6 time and place, Decedent Carlos Perez was an inmate in protective custody under administrative
7 segregation.

8 23. At approximately 8:00 p.m., Defendants Cox, Neven, Filson, Oliver, Ramos,
9 Castro and Smith violated policies and procedures and had inmate Andrew Arevalo out of his cell
10 at the same time as Carlos Perez.

11 24. Defendants Castro and Smith released restrained inmate Perez from his shower at
12 the same time inmate Arevalo was out of his cell on his way to the shower.

13 25. At the time the Defendant officers engaged in what is referred to as “pitch and
14 catch” rather than hands-on escort of the inmates.

15 26. Eventually, the two inmates started yelling and kicking each other.

16 27. Rather than separating the inmates, who were each handcuffed behind their backs
17 and wearing nothing but underwear and shower shoes, Defendants Castro and Smith refused to
18 intervene.

19 28. On the contrary, Defendants Smith and Castro created a gladiator-like scenario
20 and allowed the inmates to fight.

21 29. Additionally, Defendants Smith and Castro affirmatively avoided separating the
22 inmates.

23 30. Eventually, Defendant Castro maliciously and sadistically ordered Defendant
24 Ramos to deploy lethal force against Carlos Perez. Castro’s intent is demonstrated by the fact that
25 Carlos and Arevalo were handcuffed behind their backs, wearing nothing but underwear and
26 merely kicking at each other’s shins. Castro could have chosen to use a lesser means of force to
27 temper the situation such as merely walking between the handcuffed inmates and physically
28 separating them. However, rather than temper the situation he ordered the trainee officer to use

1 deadly force.

2 31. Defendant Ramos grabbed his shotgun and maliciously and sadistically shot
3 Carlos Perez multiple times with a shotgun and killed him. Ramos' intent is demonstrated by the
4 fact that Carlos and Arevalo were handcuffed behind their backs, wearing nothing but underwear
5 and merely kicking at each other's shins. Castro could have chosen to use a lesser means of force
6 to temper the situation such as merely walking between the handcuffed inmates and physically
7 separating them. Ramos malicious intent is firther demonstrated by the fact that eyewitness
8 observed him reload his shotgun approximately 1 to 2 minutes after he initially shot Carols and
9 fired at Carlos again.

10 32. Defendants' actions violated their policies and practices by having inmate Arevalo
11 out of his cell at the same time as inmate Carlos Perez.

12 33. This action was against policy and Defendants should have been trained and
13 supervised so that the inmates were not out of their cells at the same time.

14 34. The supervisory Defendants allowed the "pitch and catch" procedure to become a
15 *de facto* policy.

16 35. Defendant State of Nevada promulgated the unconstitutional policies which
17 caused Carlos Perez's death.

18 36. Those policies include the State of Nevada's policy to deploy deadly force in
19 situations that do not require such force; and, needlessly shooting inmates with shotguns.
20 Nevada's policies encouraging the use of deadly force, in non deadly force situations, lead to the
21 intent to harm Carlos Perez and lead to his homicide.

22 37. Following the homicide of Carlos Perez, the Association for State Correctional
23 Administrators ("ASCA") authored a report concerning Defendant State of Nevada's use of
24 shotguns in its prisons and its unconstitutional practice to needlessly shoot inmates.

25 38. ASCA analyzed Defendant State of Nevada's use of force policy, Administrative
26 Regulation ("AR") 405. Notably, ASCA concluded that "[k]ey elements of the Department's Use
27 of Force Policy are not consistent with nationally accepted correctional standards."

28 . . .

1 39. The Association made that determination, in part, because “AR 405's content is
2 not clear” and “[a] clear articulation of when deadly force may/should be used is also missing
3 from AR 405.”

4 40. The ASCA also concluded that “ use of force reports written by staff members
5 frequently lack substance.” The ASCA likewise determined that Defendant State of Nevada’s
6 “prison-based in-service training is minimal, varying between 16 and 24 hours per person, as
7 opposed to nationally accepted standards for 40 hours of training per person. Further, annual
8 ongoing firearms training does not meet widely accepted best practices nor the Department’s own
9 policy mandate.”

10 41. Yet most significantly, ASCA reported that during 2012, 2013, and 2014,
11 Defendant State of Nevada discharged a shotgun in its prisons 208 times. While approximately
12 two-thirds of those discharges were a blank “popper” round, 71 shootings included the use of
13 bird shot. Of the 71 shooting with live rounds, 48 occurred at High Desert State prison. In
14 contrast, other corrections institutions in this and other developed countries do not employ the
15 use of shotguns in housing units.

16 42. Under department policy, officers are allowed to pull a shotgun to get inmates
17 merely to behave, and this is not considered physical force. They must give multiple verbal
18 warnings and fire a warning shot in the air before they can shoot a live round. But if there’s a
19 fight that could cause serious injury—an inmate doesn’t necessarily have to have a
20 weapon—officers are allowed to skip birdshot off the ground, on the logic that a violent prisoner
21 might stop hurting someone if he’s hit in the legs. The State defines this method as a
22 “non-deadly” use of force, but a shotgun loaded with pellets can easily draw blood from as far as
23 50 yards away and when guards skip bird shot off the floor, the pellets “can be very unpredictable
24 in their trajectory,” the ASCA found. Before officers start shooting, they may order prisoners to
25 hit the ground—even though the shots travel parallel to the floor.

26 43. ASCA's independent corrections experts urged Nevada to phase out the use of
27 birdshot. The ASCA explained that since “1994, there have been several less than lethal and non-
28 lethal technological improvements along with policy and procedure advances.”

1 44. However, Defendant State of Nevada has flatly refused. In a response, the
2 department wrote that firing bird shot at prisoners has "stopped countless incidents that would
3 have resulted in serious injury or death." Despite the homicide of Carlos Perez by lethal force,
4 Defendant State of Nevada continues to insist that the method is "less than lethal."

5 45. Brandon Castner is an inmate in the Nevada Department of Corrections, during
6 approximately 18 months that Mr. Castner was housed in general population at High Desert State
7 Prison, he witnessed 19 inmates get shot. Mr. Castner explained: "A person wearing a white T-
8 Shirt being shot with a 12 gauge shotgun is a gruesome sight sound and smell. The White T-Shirt
9 instantly changes to red. The sound from the gun is deafening and causes your ears to ring until
10 the next morning. The sound the victim makes is unique to the person being shot, but all are
11 equally terrifying. The smell of the gun smoke mixed with the copper scent (of a lot) of blood
12 makes me retch even as I write this today."

13 46. On the night that Carlos Perez was killed, Mr. Castner was performing janitorial
14 duties in the unit where Carlos Perez was killed. Mr. Castner described the shooting of Carlos
15 Perez in haunting detail:

16 On November 12, 2014, I personally witnessed two inmates wearing handcuffs
17 being shot multiple times (the gun was even reloaded a full minute later to
continue the shooting) by a Correction Officer with a 12 gauge shotgun.

18 In 'The Hole' you are kept in total isolation. The only time you leave the cell is to
19 shower for five minutes, once every three days. The only other time you leave the
cell is for 'yard time' that is offered twice a week, for 45 minutes to an hour.
20 Going to 'yard time' means being escorted [sic] from the single isolation cell in
handcuffs to an outside 15x10 chain link cage that resembles a kennel. Full strip
21 searches are done both before and after yard time.

22 In 'The Hole' you are always in handcuffs whenever you are going to either the
yard cage or the shower cage. Even before the cell door or cage doors open you
23 are first handcuffed through a 'handcuff slot' that opens and closes and is kept
locked. (The food is also delivered through the 'handcuff slot.'). Once you are
24 handcuffed behind your back, the Correction Officer (C/O) will signal another
C/O in the Bubble. As soon as the door is open the C/O grips and holds on to your
25 upper arm. You are told this is being done for your safety, because if you were to
fall with your hands cuffed behind your back, you would have no way to protect
26 yourself and that could result in serious injury or death.

27 During these formal escorts [sic] 'per operating procedure' there is never to be
more than one person in handcuffs outside of the cell or cages. During shower
28 day, once a person is escorted [sic] and locked in an individual shower cage, the
person is unhandcuffed through the "handcuff slot" and allowed to take a shower,

1 while others are being escorted [sic] in handcuffs to other shower cages - always
2 one at a time.

3 Also per operating procedure it is required to have two C/Os on the floor during
4 any movements (escorts) [sic]. The person being escorted [sic] to take a shower
5 is to be dressed in underwear (boxer shorts), shoes (plastic flip flops sandals) and
6 is to carry a towel around their neck. The shooting on 11-12-14 that resulted in
7 serious injury and death took place during the showers from 7:58 p.m. to 8:01
8 p.m. I was working as porter/trustee on the night of the homicide. As a trustee
9 you are the only person allowed out of the cell without having to wear handcuffs.
10 Trustee work duties include janitorial-type cleaning. The cleaning supplies are
11 kept in the security office that separates the A and B side in unit 2 A-B. The
12 office has two doors. One door is to the A side and one door is to the B side. The
13 office has wrap around windows with windows in both doors. This is so the C/Os
14 can see all of both A and B sides from sitting in the office. The bubble is directly
15 above the office and has even more floor to ceiling windows that are reinforced by
16 security bars. Per operating procedure the office doors are to remain closed and
17 locked. This, however, rarely happens because of C/Os going in and out of the
18 office or back and forth between the A and B side. Both doors are most often
19 propped wide open as was the case on the night of 11-12-14.

20 On 11-12-14 there were three C/Os in unit 2 A-B as usual. One C/O up in the
21 control bubble overlooking the floor and working the remote controlled cell doors,
22 his name was C/O Romo, or Ramos, or Ramo – I am unsure how his name is
23 spelled.

24 The two C/Os down on the floor were C/O Smith and C/O Castro.

25 At around 7:55 p.m. I was cleaning the A side of unit 2 A-B. The two C/Os,
26 Castro and Smith, were on the B side of unit 2 A-B. They were conducting the
27 inmate shower procedure. At this time both office doors were propped wide open,
28 allowing me clear passage and an unobstructed line of sight into the B side. What
I observed while cleaning was both C/Os on the upstairs tier. One was
handcuffing people in the shower cage and then unlocking the shower cage door.
Then, rather than hold on to and escort [sic] each person back to their cell, they
would let them walk by themselves into their cells. Once inside the cell, the C/O
in the bubble would close the cell door. The person inside the cell would then
wait for the other C/O to unhandcuff him through the handcuff slot. This is not
standard operating procedure. Each person is to be escorted individually by the
arm. It is referred to as “single man movement”. It is not uncommon for C/Os to
follow their own rules.

Minutes before the shooting started, I was watching the two floor C/Os with hope
to get their attention. So to ask permission to enter the office and get a trash bag
out of the cabinet. I finally asked the C/O who was up on the bubble. I was
granted permission.

From inside the downstairs security office with the B side door propped wide
open, I witnessed C/O Castro let inmate Carlos (I only know his first name) walk
out of the shower cage I handcuffs to return to his cell unescorted. [sic]. Carlos
entered the cell, but C/O Romo in the bubble did not close the cell door. At the
same time C/O Castro let another inmate named “Silent” (I only know him by his
gang name) out of his shower cage. Silent also had his hands handcuffed behind
his back.

1 Inmate Carlos stepped back out of his cell and walked towards inmate Silent. I
2 stood in the B side office doorway watching intently because both Carlos and
Silent were exchanging loud angry words and walking towards each other.

3 C/O Romo was in the bubble window, directly above my head, watching what I
4 was watching.

5 C/O Castro and C/O Smith were both standing less than thirty feet away from the
6 two people wearing their underwear with their hands handcuffed behind their
backs.

7 The upstairs "top tier" is no more than four feet wide. Eventually Carlos and
8 Silent met and began tentatively kicking at each others shins and then backing
9 away to yell at each other before kicking again. Both were being very careful, so
not to be the first one to fall down. Being that they were handcuffed behind their
backs, the first one to fall would be vulnerable to being stomped on.

10 During this little shin kicking and screaming match, both C/O Castro and C/O
11 Smith had ample time and opportunity to stop or separate the handcuffed inmates.
12 The floor C/Os instead of correcting their mistake, to have let two inmates on the
13 floor at the same time, both backed away from the inmates. The two floor C/Os
14 then signaled and screamed for the C/O in the bubble to get the shotgun. During
15 the time it took for C/O Romo to get the shotgun, the inmates could have easily
been separated, pushed over, or tackled. Instead both of the floor C/Os moved
further away from the inmates, who were unable to even harm each other. Neither
inmate was even slightly hurt by the little off balance kicks to each others shin.
The majority of the time both inmates were backing away from each other and just
yelling. The inmates were not even looking or yelling at the C/Os (nor did they
ever).

16 I heard the window (gun port) being opened wider. I look up directly above my
17 head to see the black barrel of the shotgun. The shotgun was being aimed at the
18 people in handcuffs. I was underneath the shotgun barrel, less than eight feet
19 away. I looked back up at C/O Castro and C/O Smith who are now both up
against the upstairs door that separates the A and B sides top tier. The two floor
C/Os had moved as far away from the inmates as possible. C/O Castro was now
plugging his ears with his two pointer fingers and screaming "Shoot! Shoot!"

20 Two or three seconds later the shotgun exploded over my head. It was loud, but it
21 was a blank round. Just a warning shot. It startles everyone. Both Carlos and
22 Silent freeze, but stayed focus on each other. So not to give the other an
23 opportunity to get a good kick or leg sweep in. Instantly after the blank had been
fired I heard the "Clack, clack!" as C/O Romo pumped another round into the
chamber of the shotgun. Both C/Os Smith and Castro are plugging their ears and
yelling for C/O Romo to "Shoot'em!"

24 At this time Carlos and Silent are not engaged in shin kicking each other and are
25 no more than 40 feet away from the barrel of the shotgun when the second shot
26 went off. A live 12 gauge round exploded and was a direct hit into the upper
27 chest of Carlos. Because Carlos had his arms pulled back by the handcuffs behind
28 his back his heart was a clear target for C/O Romo. The white T-shirt that Carlos
was wearing instantly saturated to red. And then without even buckling his knees,
or even a slight collapse of his legs, Carlos falls forward like a fallen tree. – Many
eyewitnesses would later describe Carlos falling after the first live round as: "He

1 just went 'Timber!' like a tree." – Carlos, with both hands handcuffed behind his
2 back, fell lifeless head first onto the concrete floor and never moved again.

3 I will again note: I was on the floor under the shotgun and had a direct line of
4 sight. The moment Carlos was shot he never showed any signs of life. He just
5 fell head first and never moved again.

6 Silent seeing Carlos on the ground and advanced towards him and was preparing
7 to stomp on Carlos. Before Silent was able to make any contact with Carlos the
8 shotgun went off again. The third shot, and second live round was fired into the
9 lower half of Silent's body. The blast was so close that it violently knocked his
10 legs out from under him. Silent fell fast and landed on top of Carlos. Carlos did
11 not move. There was a lot of blood.

12 Silent's legs had been blown away from Carlos. Silent's upper body was on top
13 of Carlos. Once Silent recovered from the shot and fall, he began to flop with
14 little bounces on top of the lifeless body of Carlos.

15 Both inmates are on the ground, with their hand handcuffed behind their backs,
16 and are in desperate need of emergency medical attention. They were literally
17 laying in a pond of blood. The two C/Os, Castro and Smith, did not intervene or
18 even call for medical. They instead told C/O Romo to "Shoot'em again!"

19 C/O Romo shoots again. This shot hit Silent, who was in a semi-sitting position
20 with his back to the shotgun. The bullets from the shot hit Silent's neck, head,
21 and upper back. Blood sprayed and flowed out of his back. The blast hit him so
22 hard and direct that it blasted him forward to where he was in a slumped over
23 position with his head in his own lap. Silent stayed in this awkward position
24 because he was clearly unconscious.

25 The two C/Os Castro and Smith did not go near the two unmoving, bleeding
26 profusely, handcuffed people. Instead, the two C/Os ran down the stairs to where
27 I was standing in the doorway of the office. At this time Carlos and Silent were
28 seemingly unconscious and laying in the biggest pool of blood I have ever seen;
far worse than any horror film. I never could have imagined an experience so
horrific. Even with having been exposed to the 19 shootings in the general
population area, did nothing to prepare me for watching two young men
handcuffed behind their backs and wearing only their underwear as they were
being shot to unconsciousness and death by a 12 gauge shotgun at very close
range.

By the time C/O Castro and C/O Smith calmed down enough to be able to
formulate words I still remained on the scene for at least another 20 seconds.
Finally one of the C/Os mumbled "Castner go lockdown." Before I went to my
cell on the A side I took a good long look hoping to see any signs of life – I did
not. – What I saw was both people as still as death and covered in blood and both
Silent and Carlos still had their hands handcuffed behind their backs.

I walked to my cell pausing to yell out what was happening to all the people on
the A side who could all see and hear the C/O in the bubble shooting the shotgun.

I finally made it to my cell and C/O Romo closed my cell door from the bubble.
From my cell window I can see directly into the bubble. There is a large clock on
the wall and I can see that it is one minute after 8:00 p.m. (8:01 p.m.). I then
notice C/O Romo moving frantically toward the same window that he had been

1 shooting out of. He looks to be picking up something from off the ground I then
2 see that he is reloading the shotgun. All of the A side inmates are watching out
3 their cell windows into the bubble when C/O Romo points the shotgun out the
4 window as before and shoots again. He then attempts to rapidly chamber another
round and fire again but it was apparent that the gun had jammed or needed to
again be reloaded. C/O Romo continued to fumble with the pump action of the
shotgun and was unable to shoot again.

5 I could not see the affect [sic] the last shot had or who he was shooting at. I have
6 no idea why he would need to reload and shoot again a full minute and a half after
I left the immediate scene. As mentioned, both people were on the ground, in
handcuffs, and neither of them was moving. Just bleeding a lot.

7
8 Once I was certain that C/O Romo could not get the shotgun to work, I began
9 watching out of my outside cell window. I knew from the many prior shootings
10 that there would soon be a fast stampede of C/Os and medical staff. To my
11 surprise, there was not. It took more than five minutes after the last shot for the
12 medical staff to arrive with the emergency equipment. I could not see what the
13 medical staff did while they were on the B side. However, I was able to see Carlos
14 being carried out on a stretcher at exactly 8:15 p.m.

15 Carlos was still handcuffed and covered in blood. The nurse had a manual
16 breathing apparatus attached to Carlos and connected to a hand pump that the
17 nurse was squeezing rapidly. I believe the nurse was attempting to use the squeeze
18 breathing apparatus in place of C.P.R. As the nurse is squeezing the C/Os are
19 pushing the stretcher too fast for the nurse to keep up. The nurse is short and slow
20 and I notice that the mouth piece for Carlos has been pulled down around his neck
21 and one ear. The mouth piece was not even partially on his mouth. I saw the face
22 of Carlos and he already looked dead. Five minutes after Carlos was taken away,
23 Silent was taken out. Silent was still in handcuffs and covered in blood.

24
25 Two days after Carlos was killed the Attorney General came to interview me.
26 They told me I was the "star witness" and that "you seem like a smart guy." The
27 A.G. then asked "how much longer is your sentence?" and "Do you want to do all
28 of your time in the hole?" the A.G. then went on and on with false statements and
asked if I agreed. I told him that I did not agree. The A.G. insinuated that it would
be in my best interest to agree with the blatant lies as to what happened. The A.G.
even went so far as to say an inmate 'slipped out of the cuffs' and then killed the
other inmate. This couldn't be further from the truth.

Both inmates were handcuffed behind their backs the entire time. Carlos never
moved again after the first live round hit him directly in the upper chest.

No one was ever 'kicked in the head' or 'stomped out.'

None of the C/Os were ever threatened by any of the inmates.

47. Adjudication Reports created by Defendant State of Nevada, corroborate Mr.
Castner's account that Defendant State of Nevada's actual practice and pattern of behavior is to
allow Corrections Officers to fail to perform "hands-on escorts" of restrained inmates.
Specifically, Defendant Castro explained "pitch and catch, that's the norm at HDSP."

1 48. Similarly, inmate Devin Campbell described that: “The C.O. in the bubble fired
2 the warning shot. As they were getting down he proceeded to shoot live rounds at both Carlos’
3 and Andrew’s face and upper body. When both of them were on the ground there was no
4 fighting. There was a lot of yelling and screaming but no physical contact between them. I saw
5 Carlos was trying to get up from the ground and a moment later Andrew started to get up as well.
6 Before they got to their feet the C.O. in the bubble fired a third shot directly at both of their faces
7 and upper bodies. Carlos fell to the ground and Andrew got down as well. They were both
8 bleeding really bad at this point. It took medial and C.E.R.T. A long time to show up.”

9 49. Consistent with Mr. Castner’s statement that representatives from the State of
10 Nevada attempted to “say an inmate ‘slipped out of the cuffs’ and then killed the other inmate,”
11 the State of Nevada initially charged inmate Andrew Arevalo with the murder of Carlos Perez in
12 internal prison disciplinary proceedings.

13 50. This matter was originally filed in State Court. Thereafter, the State affirmatively
14 removed the case from state to federal court. (ECF No. 1). The State’s act of removal was an
15 affirmative act by which the state waived its Eleventh Amendment immunity. Consequently, the
16 State of Nevada waived its immunity when it removed this suit to federal court.

17 51. Defendants actions that resulted in the death of Carlos Perez violated Plaintiffs’
18 clearly-established and well-settled constitutional rights secured by the Fourteenth Amendment.
19 Consequently, Plaintiffs have *personal* standing to bring suit for the deprivation of her
20 fundamental constitutional right of familial companionship under 42 U.S. C. § 1983 arising out
21 of the loss of the relationship with their father, Carlos Perez.

22 52. The State of Nevada’s actual practice, custom and *de facto* policy is to rely
23 “heavily and almost exclusively to the use of weapons to maintain order.” Additionally, the fact
24 that “during 2012, 2013, and 2014, Defendant State of Nevada discharged a bird shot from a
25 shotgun in its prisons 71 times; and that of the 71 shooting with live rounds, 48 occurred at High
26 Desert State prison demonstrates that the actual customs and *de facto* policies created by the
27 supervisory level defendants demonstrates a reckless or callous indifference to the rights of the
28 inmates each is charged to administer. In short, the fact that a practice, custom, or policy is not

officially drafted does not mean that it does not exist.

FIRST CAUSE OF ACTION

42 USC §1983 - Excessive Force; Deliberate Indifference to a Serious Medical Need; and

Loss of familial association

(against all Defendants)

53. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth here.

54. By the actions and omissions of Defendants in unlawfully killing Carlos Perez described above, violated 42 USC § 1983, depriving Decedent of the clearly-established and well-settled constitutional right to be free from cruel and unusual punishment as secured by the Eight and Fourteenth Amendments to the United States Constitution.

55. At the time that Defendants shot and killed Carlos Perez, Defendants were acting under the color of law.

56. Defendants subjected Carlos Perez to their wrongful conduct, depriving Decedent Carlos Perez of rights described herein, knowingly, maliciously, and with conscious and reckless disregard for whether the rights and safety of the Decedent and others would be violated by their acts and/or omissions.

57. Defendants, and each of them, subjected Decedent to excessive use of force, in violation of the Eighth Amendment's guarantee against cruel and unusual punishment by maliciously and sadistically shooting Mr. Perez with the intent to cause him harm.

58. Defendants' use of force was not a good-faith effort to maintain discipline, but rather was done with the malicious and sadistic intent to harm the Decedent because the Defendants could have merely separated the inmates, but rather the Defendants maliciously and sadistically deployed deadly force. Defendants decision was made pursuant to NDOC's and the supervisory level defendants' unconstitutional policies to deploy deadly force in situations that do not require such force.

59. Defendants, and each of them, were deliberately indifferent to Mr. Perez's constitutional rights by shooting Mr. Perez and killing him.

1 60. Defendants knowingly made, modified and carried out policies of the State of
2 Nevada and its correctional department regarding being deliberately indifferent to the
3 constitutional rights of inmates by having a policy to needlessly shoot inmates with shotguns.

4 61. At all times material hereto, Defendants pursuant to patterns, practices, policies,
5 and/or customs, were deliberately indifferent to Mr. Perez's constitutional rights

6 62. Defendant's, and each of them, were deliberately indifferent to Decedent's serious
7 medical needs by denying Decedent treatment for the injuries caused by Defendants' excessive
8 use of force.

9 63. Mr. Perez's injuries were objectively serious because he was dying as a result of
10 being shot with shotgun pellets.

11 64. Despite the fact that Mr. Perez was dying, and Defendants' actual knowledge of
12 his worsening condition, the Defendants refused to provide Mr. Perez with timely medical care.

13 65. As a direct and proximate result of denying Decedent treatment for the shotgun
14 blasts, Decedent suffered further injuries and damages, including, death, excruciating pain, and
15 extreme mental and emotional shock.

16 66. Andrew Arevalo's Notice of Charges demonstrates that Defendant Oliver
17 responded to the scene after Carlos was shot, but rather than ensure that Carlos received adequate
18 medical attention, Defendant Oliver spoke with the trainee officer, Defendant Ramos.

19 67. Moreover, eyewitness Brandon Castner described his shock from the fact that
20 there was not a quick response of medical personnel following the shooting of Carlos Perez.
21 (Exhibit 6). Similarly, Devin Campbell described that "it took medial and C.E.R.T. A long time
22 to show up." Moreover, based upon recent media reports inmates who have been injured at
23 HDSP have been flown by helicopter, or "life flight" to a hospital. However, no such flight
24 occurred in this instance.

25 68. These facts demonstrate Defendant Oliver and other individual defendants were
26 deliberately indifferent to Carlos Perez's serious medical needs by delaying treatment to his
27 urgent shotgun wounds which resulted the unnecessary and wanton infliction of pain and the
28 further injury of bleeding out and dying.

69. Defendants implemented policies and practices concerning the use of shotguns that violated the constitution because the policies are “not consistent with nationally accepted correctional standards.” Moreover, the Defendants allowed “pitch and catch” to be the “norm of HDSP.” Those unconstitutional *de facto* policies, actual practices, and organizational customs were personally implemented by the “NDOC Defendants.” Moreover, those unconstitutional policies caused the death of Carlos Perez and the attendant violation of his civil rights.

70. As a direct and proximate result of Defendants act and/or omissions as set forth above, Decedent Carlos Perez suffered a violent death and Decedent sustained violation of his constitutional rights, emotional injuries and damages as set forth herein in a sum in excess of Seventy Five Thousand Dollars (\$75,000.00).

71. The conduct of Defendants entitles Plaintiffs to punitive damages and penalties allowable under 42 USC §1983 and N.R.S. § 42.005 in a sum in excess of Seventy Five Thousand Dollars (\$75,000.00) as to the individual defendants.

72. Plaintiffs are also entitled to costs and attorneys fees under 42 USC § 1988 and applicable Nevada statutes in a sum in excess of Seventy Five Thousand Dollars (\$75,000.00).

SECOND CAUSE OF ACTION

NRS 42.085; Claims for Wrongful Death

(against all Defendants)

73. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth here.

74. Defendants acted with willful misconduct and/or gross negligence, which was the direct and proximate cause of Mr. Carlos Perez’s untimely death on November 12, 2014.

75. Defendants purposely, knowingly, willfully and maliciously shot and killed Carlos Perez.

76. Defendants are liable to Mr. Carlos Perez’s estate and heirs pursuant to NRS § 41.085 for his pain and suffering as well as the loss of association, for loss of society and companionship and income and funeral expenses.

...

1 negligent and careless training and supervision of Defendants Oliver, Ramos, Filson, Smith and
2 Castro and other DOE Defendants, including DOES 1-10 with regard to the policy of placing a
3 violent inmate, exposing him to violent attack from an inmate while he was in protective
4 custody, and failing to use and provide less than lethal force such as batons, tasers, and pepper
5 spray.

6 85. Upon information and belief Defendants Oliver, Ramos, Filson, Smith and
7 Castro and other DOE Defendants, including DOES 1-10, were unfit and unqualified to be
8 employed by NDOC.

9 86. The Defendants were negligent in their training and supervision of their
10 corrections officers. Specifically, The ASCA determined that the State of Nevada's "prison-
11 based in-service training is minimal, varying between 16 and 24 hours per person, as opposed to
12 nationally accepted standards for 40 hours of training per person. Further, annual ongoing
13 firearms training does not meet widely accepted best practices nor the Department's own policy
14 mandate."

15 87. Likewise, the fact that "since 1994, there have been several less than lethal and
16 non-lethal technological improvements along with policy and procedure advances."

17 88. However, despite this fact, the State of Nevada has relied "heavily and almost
18 exclusively" on using deadly shotguns on unarmed inmates. Based upon these facts a reasonable
19 juror could determine that The State of Nevada knew its employees were shooting unarmed
20 inmates, the State of Nevada chose not to retrain or adequately supervise its corrections officers
21 AND as a result of the endemic use of shotguns in Nevada's prisons, particularly HDSP, Carlos
22 Perez was killed because despite lethal and non-lethal technological improvements over the past
23 20 years, Nevada continued to train and allow its officers to use shotguns to shoot unarmed
24 inmates.

25 89. Plaintiffs herein are entitled to general and special damages in an amount in
26 excess of Seventy Five Thousand Dollars (\$75,000.00).

27 90. It has become necessary for Plaintiffs to retain the services of an attorney to
28 pursue this action and Plaintiffs are entitled to an award of reasonable attorney's fees and costs in

1 prosecuting this action.

2 **FOURTH CAUSE OF ACTION**

3 **Intentional Infliction of Emotional Distress**

4 **(against all Defendants)**

5 91. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth
6 here.

7 92. Defendant's intentional murder of Carlos Perez, was extreme and outrageous and
8 was intentionally committed to cause Decedent to suffer emotional distress.

9 93. Murdering an inmate who was handcuffed, unarmed, and not posing a threat or
10 danger when he was shot by Defendant Ramos transcends all bounds of decency tolerated in a
11 civilized society.

12 94. Defendants promulgation of organizational customs and *de facto* policies that
13 caused Defendants Smith and Castro, to put two protective custody inmates together and then
14 order Defendant Ramos to shoot Carlos Perez. Allowing such behavior to exist as well as
15 allowing the endemic use of shotguns to shoot unarmed inmates is extreme and outrageous
16 conduct with the reckless disregard for causing emotional distress. As a result of the Defendants
17 choice to allow their officers to use shotguns to shoot unarmed inmates and then deny those
18 individuals timely medical care, the Plaintiffs have suffered severe or extreme emotional distress
19 arising out of the death of Carlos Perez. Consequently, Plaintiffs should be permitted to proceed
20 to discovery and to trial to prove their claims against Defendants.

21 95. As a direct and proximate result of Defendants' intentional infliction of emotional
22 distress upon Decedent, Plaintiffs have incurred special and general damages in an amount in
23 excess of Seventy Five Thousand Dollars (\$75,000.00).

24 96. That as a direct result of the intentional acts of the Defendants, and each of them,
25 Decedent was caused to suffer pain and suffering, and severe emotional distress and other related
26 costs, in excess of Seventy Five Thousand Dollars (\$75,000.00).

27 97. That as a direct result of the intentional acts of the Defendants, and each of them,
28 Plaintiffs are entitled to punitive damages in excess of Seventy Five Thousand Dollars

1 (\$75,000.00).

2 98. Plaintiffs are also entitled to costs and attorneys fees under applicable Nevada
3 statutes in a sum in excess of Seventy Five Thousand Dollars (\$75,000.00).

4 99. At all times Defendants were acting within the course and scope of their
5 employment as corrections officers of the State of Nevada and, therefore is responsible for the
6 Defendants' state torts under a theory of *Respondeat Superior*.

7 DATED this 3rd day of October, 2016

POTTER LAW OFFICES

8 By /s/ C. J. Potter, IV, Esq.
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10 Nevada Bar No. 1988
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of October, 2016, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

By: /s/ C. J. Potter
Employee of Potter Law Offices